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8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION  
12

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 BILLY JOE ACOSTA,

17 Defendant.

No.

PLEA AGREEMENT

18  
19 I, Billy Joe Acosta, and the United States Attorney's Office for the Northern District of  
20 California (hereafter "the government") enter into this written plea agreement (the "Agreement")  
21 pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure:

22 The Defendant's Promises

23 1. I agree to plead guilty to count one of the captioned information charging me with  
24 Criminal Infringement of Copyright in violation of 18 U.S.C. § 2319(c)(1) & 17 U.S.C. §  
25 506(a)(2). I agree that the elements of the offense and the maximum penalties are as follows: (1)  
26 I acted willfully (2) and distributed one or more copies of one or more copyrighted works within  
27 a 180 day period that (3) had a total retail value of \$1,000 or more.

28 a. Maximum prison sentence 1 year

PLEA AGREEMENT  
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- |    |                                 |           |
|----|---------------------------------|-----------|
| b. | Maximum fine                    | \$100,000 |
| c. | Maximum supervised release term | 1 year    |
| d. | Mandatory special assessment    | \$25      |
| e. | Restitution                     | \$0       |

2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that the following facts are true:

On or about and between August 2000 and September 2000, I offered for sale over the Internet on eBay and Yahoo! auctions at least 10 copies of recordings of a live musical performance by Thirty Odd Foot of Grunts (a rock music band that features Russell Crowe) on August 4, 2000 in Austin, Texas, that contained copyrighted songs. The total value of the items that I offered for sale had a total value that exceeded \$1,000. As a result of the auctions on eBay and Yahoo!, I sold a number of copies of the live performance, including one copy to a purchaser in the Northern District of California, and earned approximately \$700 from the sales. I stopped selling the recordings after eBay and Yahoo! refused to continue to offer the items for sale on their sites.

3. I agree to give up all rights that I would have if I chose to proceed to trial, including the rights to a trial before the district court with the assistance of an attorney; to confront and cross-examine government witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery from the government; and to pursue any affirmative defenses and present evidence.

4. I agree to give up my right to appeal my conviction, the judgment, and orders of the Court. I also agree to waive any right I may have to appeal my sentence.

5. I agree not to file any collateral attack on my conviction or sentence, including a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim that my constitutional right to the effective assistance of counsel was violated.

6. I agree not to ask the Court to withdraw my guilty plea at any time after it is entered.

7. I agree that the Sentencing Guidelines should be calculated as follows, that I will

PLEA AGREEMENT

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not ask for any other adjustments to or reductions of the offense level and that I will not seek a downward departure for any reason:

- |    |  |      |
|----|--|------|
| a. | Base Offense Level, U.S.S.G. § 2B5.3(a):   | 8    |
| b. | Acceptance of responsibility:<br>(If I meet the requirements of<br>U.S.S.G. § 3E1.1) | -- 2 |
| c. | Adjusted offense level   | 6    |

I agree that, regardless of any other provision in this agreement, the government may and will provide to the Court and the Probation Office all information relevant to the charged offense or the sentencing decision. I also agree that the Court is not bound by the Sentencing Guidelines calculations above, the Court may conclude that a higher guideline range applies to me, and, if it does, I will not be entitled, nor will I ask, to withdraw my guilty plea.

8. I agree not to commit or attempt to commit any crimes before sentence is imposed or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial release (if any); intentionally provide false information to the Court, the Probation Office, Pretrial Services, or the government; or fail to comply with any of the other promises I have made in this Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement, then the government will be released from all of its promises below, but I will not be released from my guilty plea.

9. I agree that this Agreement contains all of the promises and agreements between the government and me, and I will not claim otherwise in the future.

10. I agree that this Agreement binds the U.S. Attorney's Office for the Northern District of California only, and does not bind any other federal, state, or local agency.

### The Government's Promises

11. The government agrees not to file or seek any additional charges that could be filed as a result of the investigation that led to the captioned information.

12. The government agrees to recommend the Guidelines calculations set out above.

### The Defendant's Affirmations

13. I confirm that I have had adequate time to discuss this case, the evidence, and this

PLEA AGREEMENT

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1 Agreement with my attorney, and that he has provided me with all the legal advice that I  
2 requested.

3 14. I confirm that while I considered signing this Agreement, and at the time I signed  
4 it, I was not under the influence of any alcohol, drug, or medicine.

5 15. I confirm that my decision to enter a guilty plea is made knowing the charges that  
6 have been brought against me, any possible defenses, and the benefits and possible detriments of  
7 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no  
8 one coerced or threatened me to enter into this agreement.

9  
10  
11 Dated: 3/21/02

  
BILLY JOE ACOSTA  
Defendant


13  
14 ROBERT S. MUELLER, III  
United States Attorney

15  
16 Dated: 3/21/02

  
JOSEPH E. SULLIVAN  
Assistant United States Attorney

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18  
19 I have fully explained to my client all the rights that a criminal defendant has and all the  
20 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement  
21 and all the rights he is giving up by pleading guilty, and, based on the information now known to  
22 me, his decision to plead guilty is knowing and voluntary.  
23

24 Dated: 3/21/02

  
NICHOLAS HUMY, ESQ.  
Assistant Federal Public Defender  
Attorney for Defendant

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PLEA AGREEMENT  
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